

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS E. HORNISH AND SUZANNE J.
HORNISH JOINT LIVING TRUST, TRACY AND
BARBARA NEIGHBORS, ARUL MENEZES AND
LUCRETIA VANDERWENDE, LAKE
SAMMAMISH 4257 LLC, HEBERT MOORE AND
ELYNNE MOORE, AND EUGENE MOREL AND
ELIZABETH MOREL,

Plaintiffs,

vs.

KING COUNTY, a home rule charter county,

Defendants.

Case No.: 2:15-cv-00284-MJP

AMENDED COMPLAINT FOR
DECLARATORY RELIEF

COME NOW Plaintiffs Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust, Tracy and Barbara Neighbors, Arul Menezes and Lucretia Vanderwende, Lake Sammamish 4257 LLC (owners Arul Menezes and Lucretia Vanderwende), Herbert and Elynne Moore, and Eugene and Elizabeth Morel, pursuant to this Court's Order dated August 7, 2015 (D.E. 30), and for their cause of action against King County, pursuant to the Revised Code of Washington § 7.24.010, *et. seq.*, allege as follows:

AMENDED COMPLAINT FOR DECLARATORY RELIEF
PAGE 1
Case No.: 2:15-cv-00284-MJP

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NATURE OF ACTION

1
2 1. Plaintiffs are landowners who own fee title in land adjoining a 12.45 mile length of
3 abandoned railroad right-of-way in King County, Washington between milepost 7.3, near
4 Redmond, and milepost 19.75, at Issaquah, in King County, Washington along Lake Sammamish.

5 2. The railroad, both at the time of the acquisition of the right-of-way in the late 1800s
6 and the abandonment of the right-of-way in 1998, acquired a surface easement for railroad
7 purposes over and through the adjacent landowners' land.

8
9 3. The railroad line in question was originally constructed by the Seattle, Lake Shore
10 & Eastern Railway Company (SLS&E) from May 1887 through March 1888. The SLS&E
11 acquired rights-of-way across public lands under the 1875 Act (codified at 43 U.S.C. § 937),
12 easement deeds, and prescriptive easements. The original easement deed to the railroad applicable
13 to Plaintiff Hornish's property is included in their chain of title and the railroad acquired a
14 prescriptive easement only over the remaining Plaintiffs' properties.

15
16 4. On July 5, 1887, the SLS&E secured approval from the Department of the Interior
17 of their map identifying the location for proposed construction of a railroad running generally
18 along the eastern shoreline of Lake Sammamish, Washington. Construction of the railroad was
19 completed in 1888. On April 15, 1891, the SLS&E filed a Map of Location showing the final
20 location of the constructed railroad, with the United States Land Office in Seattle, Washington.

21 5. On May 13, 1998, the Surface Transportation Board ("STB") granted Burlington
22 Northern Santa Fe ("BNSF") an exemption to abandon a 12.45 mile length of railroad between
23 milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, Washington.
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1 6. On September 16, 1998, the STB authorized The Land Conservancy of Seattle
2 and King County (TLC) to assume financial responsibility for the rights-of-way pursuant to the
3 National Trails System Act Amendments of 1983, Pub. L. No. 98-11, § 208, 97 Stat. 42, codified
4 at 16 U.S.C. § 1247(d) (2006) (“Trails Act”). *See Burlington N. & Santa Fe Ry. Co. -*
5 *Abandonment Exemption - in King Cnty., WA*, STB Docket No. AB-6 (Sub. No. 380X), 1998
6 STB LEXIS 519, 1998 WL 638432.

7
8 7. The STB also authorized the issuance of a Notice of Interim Trail Use (“NITU”)
9 for the BNSF right-of-way, permitting King County and the TLC to establish a public
10 recreational trail over the railroad right-of-way. The STB’s ruling authorized conversion of the
11 railroad rights-of-way into a recreational trail, pursuant to the Trails Act. The NITU was issued
12 on September 18, 1998.

13 8. King County subsequently reached an agreement with BNSF for use of the right-
14 of-way for trail purposes. On September 29, 1998, counsel for the TLC informed the STB that
15 the parties had reached an agreement railbanking the railroad corridor pursuant to the NITU.
16 Since the STB approved conversion of the railway to a trail no railway carriers have used the
17 railroad and the tracks have been removed from the right-of-way.

18
19 9. King County, by and through the Trails Act, acquired a surface easement for a
20 recreational trail with the potential reactivation of a railroad over Plaintiffs’ land.

21 10. The Plaintiffs own the underlying fee in the former railroad right-of-way.

22 11. Plaintiffs obtained chains of title for each Plaintiff and the chains establish their
23 fee ownership in their adjacent property as well as their fee ownership underlying the railroad
24 corridor. The chains of title demonstrate that Plaintiffs’ ancestors in title owned the land within
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1 the railroad right-of-way and, as successors in interest, these Plaintiffs likewise obtained such
2 fee ownership interest underlying the railroad right-of-way.

3 12. Plaintiffs seek a declaratory judgment ordering that the railroad only held an
4 easement for railroad purposes and King County only acquired an easement for recreational trail
5 purposes by and through the Trails Act with preservation of the right-of-way only for future
6 railroad purposes and uses through railbanking.

7
8 **THE PARTIES**

9 13. Plaintiff The Thomas E. Hornish and Suzanne J. Hornish Joint Living Trust,
10 Thomas and Suzanne Hornish, trustees, are residents of King County, Washington who own land
11 adjacent to the former railroad easement acquired by King County in 1998. The Thomas E.
12 Hornish and Suzanne J. Hornish Joint Living Trust's parcel, number 062406-9042, was acquired
13 on November 7, 2013, and includes the fee title to all that property of the abandoned right-of-
14 way that is now subject to an easement for an interim trail and possible future railroad
15 reactivation pursuant to the Trails Act. The Hornishes own fee title to the railroad right-of-way
16 under Washington law because the chain of title proves that (1) no grantor in the chain of title
17 expressly reserved the former railroad right-of-way unto themselves despite describing the land
18 conveyed in metes and bounds; (2) no grantor in the entire chain of title has ever claimed
19 ownership in the former railroad right-of-way because each grantor conveyed their interest in
20 the former railroad right-of-way; and (3) based on the opinion of plaintiffs' title expert, each and
21 every grantor in the chain of title intended to convey all the interest they owned to each grantee.
22 The chain of title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he
23 has concluded that the Hornishes own the fee title in the right-of-way under Washington law.
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1 John Rall's Declaration/Report is attached as Exhibit A and a copy of the current deed and chain
2 of title evidencing ownership of the above-described property is attached as Exhibit B.

3 14. Plaintiffs Tracy and Barbara Neighbors are residents of King County,
4 Washington who own land adjacent to the former railroad easement acquired by the King County
5 in 1998. Tracy and Barbara Neighbors' parcel, number 072406-9006, was acquired on June 22,
6 2011, and includes the fee title to all that property of the abandoned right-of-way that is now
7 subject to an easement for an interim trail and possible future railroad reactivation pursuant to
8 the Trails Act. The Neighbors own fee title to the railroad right-of-way under Washington law
9 because the chain of title proves that (1) no grantor in the chain of title expressly reserved the
10 former railroad right-of-way unto themselves despite describing the land conveyed in metes and
11 bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the former
12 railroad right-of-way because each grantor conveyed their interest in the former railroad right-
13 of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in the
14 chain of title intended to convey all the interest they owned to each grantee. The chain of title
15 documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded that
16 the Neighbors own the fee title in the right-of-way under Washington law. John Rall's
17 Report/Declaration is attached as Exhibit A and a copy of the current deed and chain of title
18 evidencing ownership of the above-described property is attached as Exhibit C.

21 15. Plaintiffs Arul Menezes and Lucretia Vanderwende are residents of King County,
22 Washington who own land adjacent to the former railroad easement acquired by the King County
23 in 1998. Arul Menezes and Lucretia Vanderwende's parcel, number 072406-9024, was acquired
24 on July 22, 1997 and includes the fee title to all that property of the abandoned right-of-way that
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1 is now subject to an easement for an interim trail and possible future railroad reactivation
2 pursuant to the Trails Act. Menezes and Vanderwende own fee title to the railroad right-of-way
3 under Washington law because the chain of title proves that (1) no grantor in the chain of title
4 expressly reserved the former railroad right-of-way unto themselves despite describing the land
5 conveyed in metes and bounds; (2) no grantor in the entire chain of title has ever claimed
6 ownership in the former railroad right-of-way because each grantor conveyed their interest in
7 the former railroad right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and
8 every grantor in the chain of title intended to convey all the interest they owned to each grantee.
9 The chain of title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he
10 has concluded that Menezes and Vanderwende own the fee title in the right-of-way under
11 Washington law. John Rall's Declaration/Report is attached as Exhibit A and a copy of the
12 current deed and chain of title evidencing ownership of the above-described property is attached
13 as Exhibit D.
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16 16. Plaintiff Lake Sammamish 4257 LLC (owners Arul Menezes and Lucretia
17 Vanderwende) is a resident of King County, Washington who owns land adjacent to the former
18 railroad easement acquired by the King County in 1998. Lake Sammamish 4257 LLC's parcel,
19 number 172406-9079, was acquired on March 20, 2015 and includes the fee title to all that
20 property of the abandoned right-of-way that is now subject to an easement for an interim trail
21 and possible future railroad reactivation pursuant to the Trails Act. Lake Sammamish 4257 LLC
22 owns fee title to the railroad right-of-way under Washington law because the chain of title proves
23 that (1) no grantor in the chain of title expressly reserved the former railroad right-of-way unto
24 themselves despite describing the land conveyed in metes and bounds; (2) no grantor in the entire
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1 chain of title has ever claimed ownership in the former railroad right-of-way because each
2 grantor conveyed their interest in the former railroad right-of-way; and (3) based on the opinion
3 of Plaintiffs' title expert, each and every grantor in the chain of title intended to convey all the
4 interest they owned to each grantee. The chain of title documentation has been reviewed by
5 Plaintiffs' title expert, John Rall, and he has concluded that Lake Sammamish 4257 LLC owns
6 the fee title in the right-of-way under Washington law. John Rall's Declaration/Report is
7 attached as Exhibit A and a copy of the current deed and chain of title evidencing ownership of
8 the above-described property is attached as Exhibit E.
9

10 17. Plaintiffs Hebert Moore and Elynne Moore are residents of King County,
11 Washington who own land adjacent to the former railroad easement acquired by the King County
12 in 1998. Hebert Moore and Elynne Moore's parcel, number 172406-9077, was acquired on
13 September 12, 2002 and includes the fee title to all that property of the abandoned right-of-way
14 that is now subject to an easement for an interim trail and possible future railroad reactivation
15 pursuant to the Trails Act. The Moores own fee title to the railroad right-of-way under
16 Washington law because the chain of title proves that (1) no grantor in the chain of title expressly
17 reserved the former railroad right-of-way unto themselves despite describing the land conveyed
18 in metes and bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the
19 former railroad right-of-way because each grantor conveyed their interest in the former railroad
20 right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in
21 the chain of title intended to convey all the interest they owned to each grantee. The chain of
22 title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded
23 that the Moores own the fee title in the right-of-way under Washington law. John Rall's
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1 Declaration/Report is attached as Exhibit A and a copy of the current deed and chain of title
2 evidencing ownership of the above-described property is attached as Exhibit F.

3 18. Plaintiffs Eugene and Elizabeth Morel are residents of King County, Washington
4 who own land adjacent to the former railroad easement acquired by the King County in 1998.
5 Eugene and Elizabeth Morel's parcel, numbers 072406-9008 and 072406-9090, were acquired
6 on May 27, 1998 and include the fee title to all that property of the abandoned right-of-way that
7 is now subject to an easement for an interim trail and possible future railroad reactivation
8 pursuant to the Trails Act. The Morels own fee title to the railroad right-of-way under
9 Washington law because the chain of title proves that (1) no grantor in the chain of title expressly
10 reserved the former railroad right-of-way unto themselves despite describing the land conveyed
11 in metes and bounds; (2) no grantor in the entire chain of title has ever claimed ownership in the
12 former railroad right-of-way because each grantor conveyed their interest in the former railroad
13 right-of-way; and (3) based on the opinion of Plaintiffs' title expert, each and every grantor in
14 the chain of title intended to convey all the interest they owned to each grantee. The chain of
15 title documentation has been reviewed by Plaintiffs' title expert, John Rall, and he has concluded
16 that the Morels own the fee title in the right-of-way under Washington law. John Rall's
17 Declaration/Report is attached as Exhibit A and a copy of the current deed and chain of title
18 evidencing ownership of the above-described property is attached as Exhibit G.

19 19. King County is a home rule charter county and a political subdivision of the State
20 of Washington.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to the Revised Code of Washington § 7.24.010 *et seq.* because the Defendants have clouded the title to Plaintiffs' property. The Defendants only obtained an easement for trail use over the surface of Plaintiffs' property by and through implementation of the Trails Act. This action presents a claim arising under the laws of the United States as well as the laws of Washington.

21. Pursuant to the Revised Code of Washington § 4.12.10, venue is proper because (1) Defendants reside in King County; (2) a substantial part of the events or omissions giving rise to the claims occurred in King County; and (3) all of the property that is the subject of this action is situated in King County.

FACTS PERTINENT TO ALL CAUSES FOR RELIEF

22. In the late 1800s, SLS&E acquired land to construct their railroad right-of-way along Lake Sammamish by way of the 1875 Act, easement deeds and prescriptive easements.

23. The original conveyances to the railroad have already been analyzed and determined to convey mere easements for railroad purposes by Judge Marian Blank Horn of the United States Court of Federal Claims in *Beres v. United States*, 104 Fed. Cl. 408 (Fed. Cl. 2012). Judge Horn's Opinion and Order, rendered on April 5, 2012, concluded that the conveyances at issue in this case were conveyances of easements to the railroad for their railroad purposes only and that the easement currently on Plaintiffs' land is a surface easement for recreational trail use with the potential reactivation of a railroad.

24. The Seattle, Lake Shore & Eastern Railway Company changed names and ownership on several occasions over many decades. After many changes in ownership and

1 acquisition of the line from previous railroads, BNSF became the rail operator. BNSF operated
2 the railroad line over the railroad corridor for a time and ultimately stopped using the right-of-
3 way for the operation of a railroad.

4 25. The Trails Act authorizes the STB, the governmental entity responsible for
5 regulating railroads and their common carrier obligations, to “preserve for possible future
6 railroad use rights-of-way not currently in service and to allow interim use of the land as
7 recreational trails.”
8

9 26. Congress enacted the Trails Act to address the national problem of railroad
10 abandonments and the loss of the national network of rights-of-way. The Trails Act authorizes
11 the STB to preserve railroad corridors or rights-of-way not currently in use for train service for
12 possible future rail use by converting those rights-of-way into recreational trails. In essence, the
13 Trails Act allows a railroad to relinquish responsibility for a rail line by transferring the corridor
14 to an entity that will use it as a recreational trail. Although the corridor is not used as a railroad
15 during the period of interim trail use, it remains intact for potential future use for rail service.
16 This process is called “railbanking.”
17

18 27. Pursuant to the Trails Act, before a railroad corridor may be converted into a
19 recreational trail, the railroad must either initiate abandonment proceedings with the STB under
20 49 U.S.C. § 10903 or seek an exemption from the ordinary abandonment procedures under 49
21 U.S.C. § 10502. Under either procedure, abandonment of the rail line and right-of-way will not
22 be approved by the STB if a qualified trail provider submits to the STB a request to use the right-
23 of-way as a recreational trail.
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1 28. If the trail provider submits a statement of willingness to assume financial and
2 legal responsibility to the STB and the railroad, the STB will issue a NITU, which preserves the
3 STB's jurisdiction over the rail corridor while the parties negotiate an Interim Trail Use
4 Agreement. 49 C.F.R. § 1152.29(c).

5 29. The NITU preserves the STB's jurisdiction over the rail corridor, allows the
6 railroad to discontinue operations and remove track and equipment, and affords the railroad and
7 the trail provider 180 days to negotiate a railbanking and Trails Use Agreement. During this
8 period, the railroad will negotiate an agreement for the transfer of the corridor to the trail
9 operator.

10 30. If an agreement is ultimately reached, the NITU automatically authorizes the
11 interim trail use. If the STB takes no further action, the trail sponsor then may assume
12 management of the right-of-way, subject only to the right of the railroad to reassert control of
13 the property for restoration of rail service. If an agreement is not reached, the railroad will be
14 allowed to abandon the line, at which time the STB's jurisdiction over the right-of-way
15 terminates and the fee ownership in the rail corridor returns to the adjacent landowners.

16 31. In 1998, BNSF filed a Petition for Exemption to abandon the line with the STB.
17 On September 16, 1998, the STB authorized the Land Conservancy of Seattle and King County
18 to assume financial responsibility for the corridor and the conversion of the corridor into a
19 recreational trail. The NITU from the STB was filed pursuant to the Trails Act and is attached
20 as Exhibit H.

21 32. Pursuant to the Trails Act and its implementing regulations, King County entered
22 into an interim Trail Use Agreement with BNSF on September 29, 1998 to railbank the railroad
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1 corridor from milepost 7.3 near Redmond and milepost 19.75 at Issaquah, in King County.
2 Washington, subject to reactivation for the resumption of interstate freight service. The interim
3 Trail Use Agreement designated King County as the interim trail user for railbanking purposes.
4 The Trail Use Agreement is attached as Exhibit I.

5 33. King County, through the Quit Claim Deed from BNSF, acquired an easement
6 over the surface of the right-of-way which, pursuant to the Trails Act, is now an easement for a
7 hiking and biking trail with the possible reactivation of a railroad.
8

9 **COUNT I - DECLARATORY JUDGMENT**

10 For Count I against King County, Plaintiffs allege as follows:

11 34. Plaintiffs hereby incorporate by reference paragraphs 1-33 as though fully set
12 forth herein.

13 35. Plaintiffs own the underlying fee in the railroad right-of-way adjacent to their
14 property, including subsurface and aerial rights.
15

16 36. BNSF, prior to implementation of the Trails Act and the granting of a Quit Claim
17 Deed to King County, possessed an easement for railroad purposes on the surface of Plaintiffs'
18 fee ownership in the railroad's right-of-way.

19 37. By and through the Trails Act, the railroad purposes easement has been preserved
20 for future use and King County only acquired an easement for a hiking and biking trail with the
21 potential reactivation of a railroad on the surface of Plaintiffs' fee ownership.
22

23 38. Under the Uniform Declaratory Judgments Act, Chapter 7.24 of the Revised Code
24 of Washington, the Court has jurisdiction to declare the rights of the parties with respect to the
25 railroad right-of-way at issue. Specifically, under Section 7.24.020 of the Revised Code of

1 Washington, any person claiming an interest under a deed, written contract, or statute is entitled
2 to a determination of rights arising under the deed, written contract, or statute.

3 39. Plaintiffs are entitled to a declaration of rights that the original source conveyance
4 to the railroad was an easement and other interests acquired by the railroad were prescriptive
5 easements, that the easements were for railroad purposes only, and that Plaintiffs are the fee
6 owners of the railroad right-of-way at issue, and King County only acquired a surface easement
7 for a hiking and biking trail with the possible reactivation of a railroad pursuant to the Trails Act.
8

9 WHEREFORE, Plaintiffs respectfully request that judgment be entered for Plaintiff and
10 against King County for a declaratory judgment declaring that the railroad only acquired an
11 easement for railroad purposes over and through Plaintiffs' land and King County, by the Quit
12 Claim Deed from BNSF, only acquired a surface easement for a hiking and biking trail with the
13 possible reactivation of a railroad by and through the Trails Act, and for such further monetary
14 and equitable relief and for allowable costs and attorneys' fees as the Court may deem just and
15 proper.
16

17 Dated: August 14, 2015

18 **STEWART, WALD & McCULLEY, L.L.C.**

19
20 By /s/ Thomas S. Stewart

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PAGE 13

Case No.: 2:15-cv-00284-MJP

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10 **ATTORNEYS FOR PLAINTIFFS**

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 14th day of August 2015, the foregoing was filed
13 electronically with the Clerk of the Court to be served by the operation of the Court's electronic
14 filing system upon all parties of record.

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